IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMONS FOR JUDGMENT NO.100 OF 2002
IN
SUMMARY SUIT NO.3524 OF 2001

Usha S. Devsani ...Plaintiff.

V/s

Shri Chandrashekhar
G. Shetye ...Defendant.

Mr. H.R. Pawar for the Plaintiff.

Mr. K.B. Irani i/b M/s O.P. Soni & Co. for the defendant.

CORAM: V.M. KANADE, J.

DATE : 24th August, 2004.

P.C.

1. Plaintiff has filed a suit for recovery of an amount of Rs 2 lakhs with interest. The suit is based on an agreement dated 8/9/1998 wherein it is mentioned that the plaintiff gave a friendly loan of Rs 2 lakh to the defendant. A receipt of Rs. 2 lakh is acknowledged. Thereafter, notice was sent by the plaintiff's advocate for payment of the said amount of Rs 2 lakh. A reply was given by the defendant's advocate in which it was stated that the plaintiff was a money lender and defendant had taken a loan of Rs 2 lakh at an exorbitant rate of interest of 5.5% per month and that the defendant had paid an amount of Rs. 2,64,000/- towards interest in addition to repayment

of Rs 2 lakhs. A suit was filed by the plaintiff and the Summons for Judgment was taken out in the said suit. In the reply which was filed to the Summons for Judgment, it was stated that the defendant had repaid an amount of Rs 4,64,000/- to the plaintiff in cash. Defendant also relied upon the affidavit filed by one Prashant Tade who stated in the affidavit that the amount had been paid by the defendant to the plaintiff. Further it was stated that as per clause 3 of the agreement, it was agreed that if the defendant failed to pay the amount of Rs 2 lakhs, defendant would dispose of his room. It was stated that the plaintiff had taken all the rent receipts of the said room and of payment of the said amount of Rs 2 lakhs with interest. That, the plaintiff had returned the documents to the defendant in the presence of Shri Prashant Tade. However, the agreement was not returned on one pretext or the other.

2. Defendant has not produced any receipt to show that the said amount had been repaid with interest. It cannot be believed that the defendant had entered into an agreement with the plaintiff for an amount of Rs 2 lakhs and to repay the amount in cash without insisting for the receipt. So far as the question of the plaintiff being a money lender is concerned, the

said fact will have to be proved by the defendant by adducing evidence.

3. In the circumstances, conditional leave to defend the suit is granted to the defendant on his depositing in this Court an amount of Rs 1 lakh within a period of 12 weeks from today. In the event the said amount is not deposited, the plaintiff would be entitled to apply for decree in terms of prayers of the plaint.

4. Summons for Judgment is disposed of in the above terms

V.M. KANADE, J.